STATUTORY INSTRUMENTS

2018 No. 652

The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018

PART 1

GENERAL AND COMMENCEMENT

Citation and interpretation

1.—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018.

(2) In these Regulations—

"RIPA" means the Regulation of Investigatory Powers Act 2000(**1**);

"the 2016 Act" means the Investigatory Powers Act 2016.

General privacy protections coming into force on 31st May 2018

2. The following provisions of Part 1 of the 2016 Act come into force on 31st May 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions relating to warrants under Part 2 or 5 or Chapters 1 and 3 of Part 6, except decisions regarding whether to approve the use of criteria under section 153 or 194;

(b) section 4 (definition of "interception" etc.);

(c) section 5 (conduct that is not interception);

(d) section 6 (definition of "lawful authority");

(e) section 10(3) (definition of "EU mutual assistance instrument" and "international mutual assistance agreement)(**2**) for the purpose of the definitions of "EU mutual assistance instrument" and "international mutual assistance agreement" in section 60(1) (Part 2: interpretation).

Interception provisions coming into force on 31st May 2018

3. The following provisions in Part 2 of the 2016 Act (lawful interception of communications) come into force on 31st May 2018—

(a) section 15 (warrants that may be issued under this Chapter) so far as not already in force;

(b) section 16 (obtaining secondary data) so far as not already in force;

(c) section 17 (subject matter of warrants);

(d) section 18(1)(a) and (g), (2) and (3) (persons who may apply for issue of a warrant);

(**1**) 2000 c 23.

(**2**) Section 10 is amended by S.I. 2017/730. The amendments have effect from 31st June 2017.

(e) in section 19 (power of Secretary of State to issue warrants)—

(i) subsections (1) to (3) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (4) and (5);

(f) section 20 (grounds on which warrants may be issued by the Secretary of State);

(g) in section 21 (power of Scottish Ministers to issue warrants)—

(i) subsections (1) to (3) for the purpose of the Scottish Ministers deciding to issue a warrant but not for the purpose of the issuing of a warrant, and

(ii) subsections (4) to (6);

(h) section 22 ("relevant Scottish applications");

(i) section 23 (approval of warrants by Judicial Commissioners);

(j) section 26 (Members of Parliament etc.);

(k) section 27 (items subject to legal privilege);

(l) section 28 (confidential journalistic material);

(m) section 29 (sources of journalistic information);

(n) section 30 (decisions to issue warrants to be taken personally by Ministers);

(o) section 31 (requirements that must be met by warrants);

(p) section 40(1) to (3) and (8) (special rules for certain mutual assistance warrants);

(q) section 53 (safeguards relating to retention and disclosure of material);

(r) section 54 (safeguards relating to disclosure of material overseas);

(s) section 60 (Part 2: interpretation) so far as not already in force.

Equipment interference provisions coming into force on 31st May 2018

4. The following provisions of Part 5 of the 2016 Act (equipment interference) come into force on 31st May 2018—

(a) section 99 (warrants under this Part: general);

(b) section 100 (meaning of "equipment data");

(c) section 101 (subject-matter of warrants);

(d) in section 102 (power to issue warrants to intelligence services: the Secretary of State)—

(i) subsections (1) to (3) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsection (4) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant and only if the Secretary of State considers that the only grounds for considering the warrant to be necessary is for the purpose of preventing or detecting serious crime;

(iii) subsections (5) to (9);

(e) in section 103 (power to issue warrants to intelligence services: the Scottish Ministers)—

(i) subsections (1) and (2) for the purpose of the Scottish Ministers deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (3) and (4);

(f) section 104 (power to issue warrants to the Chief of Defence Intelligence)—

(i) subsection (1) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (2) and (3);

(g) section 105 (decision to issue warrants under sections 102 to 104 to be taken personally by Ministers);

(h) in section 108 (approval of warrants by Judicial Commissioners) so far as relating to decisions to issue warrants under any of sections 102 to 104;

(i) section 111(1) to (3) and (8) (members of Parliament etc.);

(j) section 112 (items subject to legal privilege);

(k) section 113 (confidential journalistic material);

(l) section 114 (sources of journalistic information);

(m) section 115 (requirements that must be met by warrants) so far as relating to warrants under any of sections 102 to 104;

(n) section 129 (safeguards relating to retention and disclosure of material) so far as relating to warrants under any of sections 102 to 104;

(o) section 130 (safeguards relating to disclosure of material overseas);

(p) section 135 (Part 5: interpretation).

Bulk provisions coming into force on 31st May 2018

5. The following provisions of Part 6 (bulk warrants) come into force on 31st May 2018—

(a) section 136 (bulk interception warrants);

(b) section 137 (obtaining secondary data);

(c) section 138 (power to issue bulk interception warrants) for the purpose of the Secretary of State deciding to issue a bulk interception warrant but not for the purpose of the issuing of such a warrant;

(d) section 139 (additional requirements in respect of warrants affecting overseas operators);

(e) section 140 (approval of warrants by Judicial Commissioners);

(f) section 141 (decisions to issue warrants to be taken personally by the Secretary of State);

(g) section 142 (requirements that must be met by warrants);

(h) section 150 (safeguards relating to retention and disclosure of material);

(i) section 151 (safeguards relating to disclosure of material overseas);

(j) section 157 (Chapter 1: interpretation);

(k) section 176 (bulk equipment interference warrants: general);

(l) section 177 (meaning of “equipment data”);

(m) section 178 (power to issue bulk equipment interference warrants), for the purpose of the Secretary of State deciding to issue a bulk equipment interference warrant but not for the purpose of the issuing of such a warrant;

(n) section 179 (approval of warrants by Judicial Commissioners);

(o) section 182 (decisions to issue warrants to be taken personally by Secretary of State);

(p) section 183 (requirements that must be met by warrants);

(q) section 191 (safeguards relating to retention and disclosure of material);

(r) section 192 (safeguards relating to disclosure of material overseas);

(s) section 198 (Chapter 3: interpretation).

Miscellaneous provisions coming into force on 31st May 2018

6. The following provisions of the 2016 Act come into force on 31st May 2018—

(a) section 248 (combination of warrants and authorisations) for the purpose of the provisions of Schedule 8 coming into force in accordance with paragraph (b) of this regulation;

(b) in Schedule 8—

(i) paragraphs 1, 2, 4, 8 to 10, 13 and 14 (combined warrants that may be issued on application of an intelligence service or the Chief of Defence Intelligence) for the purpose of the Secretary of State or Scottish Ministers deciding to issue a combined warrant but not for the purpose of the issuing of such a warrant;

(ii) paragraph 15 (combined warrants: introductory provision);

(iii) in paragraph 16 (combined warrants: general)—

(aa) sub-paragraph (1) for the purpose of the Secretary of State or Scottish Ministers deciding to issue a combined warrant but not for the purpose of the issuing of such a warrant;

(bb) sub-paragraph (2);

(iv) paragraphs 17 to 19 (requirements that must be met by combined warrants and references to warrants and authorisations);

(v) in paragraph 20 (rules about issue etc. applying separately in relation to each part of a combined warrant)—

(aa) sub-paragraph (1) for the purpose of the matters in paragraphs (a) to (e) of that sub-paragraph;

(bb) sub-paragraph (2) for the purpose of the matters in paragraphs (a) and (b) of that sub-paragraph;

(cc) sub-paragraph (3);

(vi) in paragraph 21 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 1 of Schedule 8;

(bb) sub-paragraph (2) for the purpose of the matters in paragraphs (a) to (c) of that sub-paragraph;

(cc) sub-paragraph (3);

(vii) in paragraph 22 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 2 of Schedule 8;

(bb) sub-paragraphs (2) and (3);

(viii) in paragraph 23 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 3 of Schedule 8;

(bb) sub-paragraph (2);

(ix) paragraph 33 (power to make consequential amendments).

General privacy protections coming into force on 27th June 2018

7. The following provisions of Part 1 of the 2016 Act (general privacy protections) come into force on 27th June 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions regarding whether to approve the use of criteria under section 153 or 194;

(b) section 3 (offence of unlawful interception);

(c) section 7 (monetary penalties for certain unlawful interceptions);

(d) section 8 (civil liability for certain unlawful interceptions);

(e) section 9 (restriction on requesting interception by overseas authorities) so far as it applies to requests other than requests made by or on behalf of—

(i) the Director General of the National Crime Agency;

(ii) the Commissioner of Police of the Metropolis;

(iii) the Chief Constable of the Police Service of Northern Ireland;

(iv) the chief constable of the Police Service of Scotland, or

(v) the Commissioners for Her Majesty's Revenue and Customs;

(f) in section 10 (restrictions on requesting assistance under mutual assistance agreements etc.)—

(i) subsections (1) and (2) (restriction on requesting assistance under mutual assistance agreements etc.) so far as they applies to requests other than requests made by or on behalf of—

(aa) the Director General of the National Crime Agency;

(bb) the Commissioner of Police of the Metropolis;

(cc) the Chief Constable of the Police Service of Northern Ireland;

(dd) the chief constable of the Police Service of Scotland, or

(ee) the Commissioners for Her Majesty's Revenue and Customs;

(ii) subsection (3) so far as not already in force;

(g) Schedule 1 (monetary penalty notices).

Interception provisions coming into force on 27th June 2018

8. The following provisions of Part 2 of the 2016 Act (lawful interception of communications) come into force on 27th June 2018—

(a) section 19 (power of Secretary of State to issue warrants) so far as not already in force;

(b) section 24 (approval of warrants issued in urgent cases);

(c) section 25 (failure to approve warrant issued in urgent case);

(d) section 32 (duration of warrants);

(e) section 33 (renewal of warrants);

(f) section 34 (modification of warrants);

(g) section 35(1) to (5), (6)(a) and (e) and (7) (persons who may make modifications);

(h) section 36 (further provision about modifications);

(i) section 37 (notification of major modifications);

(j) section 38 (approval of major modifications made in urgent cases);

(k) section 39 (cancellation of warrants);

(l) section 40 (special rules for certain mutual assistance warrants) so far as not already in force;

(m) section 41 (implementation of warrants);

(n) section 42 (service of warrants);

(o) section 43 (duty of operators to assist with implementation);

(p) sections 44 to 51 (other forms of lawful interception);

(q) section 52 (interception in accordance with overseas requests);

(r) section 55 (additional safeguards for items subject to legal privilege);

(s) section 56 (exclusion of matters from legal proceedings etc.);

(t) section 57 (duty not to make unauthorised disclosures);

(u) section 58(1), (2) and (4) to (9) (section 57: meaning of "excepted disclosure")(**3**);

(v) section 59 (offence of making unauthored disclosures);

(w) Schedule 3 (exceptions to section 56).

Equipment interference provisions coming into force on 27th June 2018

9. The following provisions of Part 5 of the 2016 Act (equipment interference) come into force on 27th June 2018—

(a) in section 102 (power to issue warrants to the intelligence services: the Secretary of State)—

(i) subsections (1) to (3) so far as not already in force;

(ii) subsection (4) to the extent it applies if the Secretary of State considers that the only ground for considering the warrant to be necessary is for the purpose of preventing or detecting serious crime;

(b) section 103 (power to issue warrants to intelligence services: the Scottish Ministers) so far as not already in force;

(c) section 104 (power to issue warrants to the Chief of Defence Intelligence) so far as not already in force;

(d) section 109 (approval of warrants issued in urgent cases);

(e) section 110 (failure to approve warrants issued in urgent cases);

(f) section 116 (duration of warrants);

(g) section 117 (renewal of warrants) so far as relating to warrants under any of sections 102 to 104;

(h) section 118 (modification of warrants issued by the Secretary of State or Scottish Ministers);

(i) section 119 (persons who may make modifications under section 118);

(j) section 120 (further provision about modifications under section 118);

(k) section 121 (notification of modifications);

(l) section 122 (approval of modifications under section 118 made in urgent cases);

(m) section 125 (cancellation of warrants) so far as relating to warrants under any of sections 102 to 104;

(**3**) Section 58 was amended by paragraph 74(2) of Schedule 9 to the Policing and Crime Act 2017 (c. 3).

(n) section 126 (implementation of warrants);

(o) section 127 (service of warrants);

(p) section 128(1) and (5) to (7) (duty of telecommunications operators to assist with implementation);

(q) section 131 (additional safeguards for items subject to legal privilege);

(r) section 132 (duty not to make unauthorised disclosures);

(s) section 133 (section 132: meaning of "excepted disclosure")(**4**);

(t) section 134 (offence of making unauthorised disclosure).

Bulk warrant provisions coming into force on 27th June 2018

10. The following provisions of Part 6 of the 2016 Act (bulk warrants) come into force on 27th June 2018—

(a) Chapter 1 (bulk interception warrants) so far as not already in force;

(b) Chapter 3 (bulk equipment interference warrants) so far as not already in force.

Oversight provisions coming into force on 27th June 2018

11. The following provisions of Part 8 of the 2016 Act (oversight arrangements) come into force on 27th June 2018—

(a) in section 229 (main oversight functions)—

(i) subsections (1), (2) and (9) so far as not already in force;

(ii) subsection (8) so far as it relates to paragraphs (b) and (c);

(b) in section 231 (error reporting)—

(i) subsections (1) to (8);

(ii) subsection (9) for the purposes of—

(aa) paragraph (a) to the extent that it applies to an error by an intelligence service or the Ministry of Defence relating to interception or equipment interference;

(bb) paragraph (b) to the extent that it applies to an error by a public authority exercising any function conferred by the 2016 Act;

(c) in section 234 (annual and other reports), subsection (2) (matters that must be included in an annual report) so far as it relates to—

(i) paragraph (d);

(ii) paragraph (e) to the extent it applies to information about the operational purposes specified during the year in warrants issued under Chapter 1 or 3 of Part 6;

(d) section 235 (investigation and information powers) so far as not already in force;

(e) in section 243 (functions of the Tribunal in relation to this Act etc.)—

(i) subsection (1)(b);

(ii) subsection (1)(c) so far as it inserts paragraphs—

(aa) (czd), (cze) and (czk);

(bb) (czl)(i) so far as that paragraph applies to any failure to cancel a warrant under Part 2 or 5 or Chapter 1 or 3 of Part 6 of the 2016 Act;

(**4**) Section 133 was amended by paragraph 74(5) of Schedule 9 to the Policing and Crime Act 2017.

(iii) subsection (1)(f);

(iv) subsection (1)(h) so far as inserted subsection (7ZB) of section 65 of RIPA applies to conduct which is, or purports to be, conduct falling within—

(aa) subsection (5)(bb), (cze) or (czk), or

(bb) subsection (5)(czl)(i) so far as it applies to any failure to cancel a warrant under Part 2 or 5 or Chapter 1 or 3 of Part 6 of the 2016 Act;

(v) subsection (1)(i) so far as it inserts paragraph (a) of subsection (8) of section 65 of RIPA so far as that paragraph applies to a warrant under Part 2 or 5 or Chapter 1 or 3 of Part 6 of the 2016 Act;

(vi) subsection (1)(j);

(vii) subsection (5)(a) and (f).

Miscellaneous provisions coming into force on 27th June 2018

12. The following provisions of the 2016 Act come into force on 27th June 2018—

(a) section 249 (payment towards certain compliance costs) so far as not already in force;

(b) section 259 (amendments of the Wireless Telegraphy Act 2006);

(c) section 271(1) (minor and consequential provision) for the purpose of the provisions coming into force in accordance with paragraph (g) of this regulation and regulation 13;

(d) section 248 (combination of warrants and authorisations) for the purpose of the provisions of Schedule 8 coming into force in accordance with paragraph (e) of this regulation;

(e) in Schedule 8—

(i) paragraph 16 (combined warrants: general) so far as not already in force;

(ii) paragraphs 20 to 23 (rules about issue etc. applying in relation to combined warrants) so far as not already in force;

(iii) paragraph 25 (certain rules in RIPA not applying to combined warrants);

(iv) paragraphs 27 to 32 (special rules about the application of this Act to combined warrants);

(f) in Schedule 9 (transitional, transitory and saving provision)—

(i) paragraph 1 (lawful interception of communications);

(ii) paragraph 10 (general saving for lawful conduct);

(g) in Schedule 10 (minor and consequential provision)—

(i) paragraphs 1 to 4;

(ii) in paragraph 6—

(aa) sub-paragraph (4) (amendment of the definition of "interception" and cognate expressions) for the purposes of the references to interception in sections 21(1), 26(4)(b), 48(4) and 65(5)(b) of RIPA;

(bb) sub-paragraph (5) (amendment of the definitions of "postal service" and "public postal service" for the purpose of the references to postal services in sections 48(4), 65(4) and (5) and 67(3) of RIPA;

(iii) paragraphs 7, 8, 9 to 35, 37, 39, 41 to 44, 50 to 52, 64, 65 and 101(1) and (2).

Repeals coming into force on 27th June 2018

13. Paragraph 45 of Schedule 10 (repeal of Chapter 1 of Part 1 of RIPA) comes into force on 27th June 2018 so far as it omits the following provisions of RIPA—

(a) in section 1 (unlawful interception)(**5**)—

(i) subsections (1) to (3);

(ii) subsection (4), except for the purpose of requests by or on behalf of—

(aa) the Director General of the National Crime Agency;

(bb) the Commissioner of Police of the Metropolis;

(cc) the Chief Constable of the Police Service of Northern Ireland;

(dd) the chief constable of the Police Service of Scotland, or

(ee) the Commissioners for Her Majesty's Revenue and Customs;

(iii) subsections (5) to (8);

(b) section 3 (lawful interception without an interception warrant)(**6**);

(c) section 4 (power to provide for lawful interception)(**7**);

(d) sections 17 and 18 (exclusion of matters from legal proceedings and exceptions)(**8**);

(e) section 19 (offence for unauthorised disclosures)(**9**).

Provisions coming into force on 8th August 2018

14. The following provisions of the 2016 Act come into force on 8th August 2018—

(a) section 13 (mandatory use of equipment interference warrants);

(b) section 271(1) (minor and consequential provision) for the purpose of the provisions coming into force in accordance with paragraph (c) of this regulation;

(c) paragraph 45 of Schedule 10 (repeal of Chapter 1 of Part 1 of RIPA) so far as it omits the following provisions of RIPA—

(i) in section 6 (application for issue of an interception warrant)(**10**)—

(aa) subsection (2)(a) to (c) and (i);

(bb) subsection (3) to the extent it applies to an application for the issue of an interception warrant made on behalf of a person specified in subsection (2)(a) to (c) or (i);

(**5**) Section 1 was amended by S.I. 2011/1340 and 2017/730.

(**6**) Section 3 was amended by paragraph 22 of Schedule 7 to the Wireless Telegraphy Act 2006 (c. 36), section 100(1) of the Policing and Crime Act 2009 (c. 26), paragraph 2 of Schedule 8 to the Counter-Terrorism and Security Act 2015 (c. 6) and S.I. 2011/1340.

(**7**) Section 4 was amended by paragraph 208 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43), paragraph 98 of Schedule 5 to the Health and Social Care Act 2012 (c. 7), section 4(4)(a) of the Wales Act 2014 (c. 29) and S.I. 2007/1388.

(**8**) Section 17 was amended by paragraph 20 of Schedule 2 to the Inquiries Act 2005 (c. 12), section 100(2) of the Policing and Crime Act 2009 (c. 26), paragraph 79 of Schedule 8 to the Crime and Courts Act 2013 (c. 22) and S.I. 2013/602. Section 18 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003 (c. 21), paragraph 21 of Schedule 2 and paragraph 1 of Schedule 3 to the Inquiries Act 2005 (c. 12), paragraph 9(3) of Schedule 1 to the Prevention of Terrorism Act 2005 (c. 2), paragraph 23 of Schedule 7 to the Wireless Telegraphy Act 2006, paragraph 169 of Schedule 16 to the Armed Forces Act 2006 (c. 52), sections 69(2) and 74 of the Counter-Terrorism Act 2008 (c. 28), section 28 of the Terrorist Asset-Freezing etc. Act 2010 (c. 38), paragraph 4 of Schedule 7 to the by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), section 16(2) of, and paragraph 11(2) of Schedule 2 to, the Justice and Security Act 2013 (c. 18), section 15(3) of the Counter-Terrorism and Security Act 2015 (c. 6) and S.I. 2001/1149 and 2007/1098.

(**9**) Section 19 was amended by paragraph 80 of Schedule 8 to the Crime and Courts Act 2013 and S.I. 2013/602.

(**10**) Section 6 was amended by section 78(2)(a) of the Police (Northern Ireland) Act 2000 (c. 32), paragraph 132(3) of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 6 of Schedule 12 to the Serious Crime Act 2007 (c. 27), paragraph 78 of Schedule 8 to the Crime and Courts Act 2013 and S.I. 2013/602.

(ii) section 9(1)(b) (renewal of warrants)(**11**) to the extent it applies to warrants issued on an application made by or on behalf of the head of an intelligence service or the Chief of Defence Intelligence.

PART 2

TRANSITIONAL AND SAVING PROVISIONS

CHAPTER 1

Transitional and saving provisions regarding interception

Safeguards relating to retention and disclosure of material

15.—(1) Until 27th June 2018—

(a) section 19 of the 2016 Act has effect as if the references in subsections (1)(c) and (3)(c) to sections 53 and 54 included references to section 15 of RIPA(**12**);

(b) section 21 of the 2016 Act has effect as if the references in subsections (1)(d) and (3)(d) to sections 53 and 54 included references to section 15 of RIPA;

(c) section 138 of the 2016 Act has effect as if the reference in subsection (1)(e) to sections 150 and 151 included a reference to section 15 of RIPA.

(2) In its application to targeted interception warrants or bulk interception warrants by virtue of paragraph (1), section 15 of RIPA has effect as if—

(a) references to related communications data included references to secondary data;

(b) references to intercepted material included references to intercepted content.

(3) Until 27th December 2018—

(a) section 150 of the 2016 Act (safeguards relating to retention and disclosure of material) has effect as if after "152", in each place it occurs there were inserted "of this Act or section 16 of the Regulation of Investigatory Powers Act 2000(**13**)";

(b) section 16 of RIPA has effect as if—

(i) references to intercepted material included references to intercepted content;

(ii) in subsection (1)—

(aa) the reference to section 15 included a reference to section 150 of the 2016 Act;

(bb) the reference to a warrant in relation to which there is a section 8(4) certificate included a reference to a bulk interception warrant (within the meaning of section 136(1) of the 2016 Act).

(4) Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force—

(a) section 55 of the 2016 Act (additional safeguards for items subject to legal privilege) has effect as if the reference in subsection (1) to a targeted interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA;

(**11**) Section 9(1)(b) was amended by S.I. 2000/3253.
(**12**) The duty imposed on the Secretary of State by section 15(1) is imposed on the Scottish Ministers by S.I. 2003/2617 in relation to warrants under section 5 issued by the Scottish Ministers.
(**13**) Section 16 was amended by section 32(5) to (7) of the Terrorism Act 2006 (c. 11).

(b) section 153 of the 2016 Act (additional safeguards for items subject to legal privilege) has effect as if the reference in subsection (1) to a bulk interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA in relation to which there is a certificate issued for the purpose of section 8(4) of that Act;

(c) section 154 of the 2016 Act (additional safeguard for confidential journalistic material) has effect as if the reference in paragraph (a) to a bulk interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA in relation to which there is a certificate issued for the purpose of section 8(4) of that Act.

Transitional provisions regarding material obtained under RIPA

16.—(1) This regulation applies until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force.

(2) The refence in section 15(3) of the 2016 Act to a bulk interception warrant under Chapter 1 of Part 6 includes a reference to a warrant under Chapter 1 of Part 1 of RIPA—

(a) which was issued on an application made by or on behalf of the head of an intelligence service, and

(b) in relation to which there is a certificate issued for the purpose of section 8(4) of that Act.

(3) In relation to a warrant under Chapter 1 of Part 1 of RIPA issued on an application made by or on behalf of the head of an intelligence service, section 15 of RIPA (general safeguards) has effect as if—

(a) in subsection (1), for paragraphs (a) and (b) there were substituted—

"(a) in the case of warrants in relation to which there are not section 8(4) certificates, that the requirements of subsections (2) and (3) of this section or section 53(2) and (5) of the Investigatory Powers Act 2016 are satisfied in relation to the intercepted material and any related communications data, and

(b) in the case of warrants in relation to which there are section 8(4) certificates—

(i) that the requirements of subsections (2) and (3) are satisfied in relation to the intercepted material and any related communications data and that the requirements of section 16 are also satisfied, or

(ii) that the requirements of section 150(2) and (5) of the Investigatory Powers Act 2016 are satisfied in relation to the intercepted material and any related communications data and that the requirements of section 152 of that Act are also satisfied.";

(b) in subsection (6)(b), for "the requirements of subsection (7) are satisfied" there were substituted—

"(i) in the case of warrants in relation to which there are not section 8(4) certificates, the requirements of subsection (7) or of section 54(2) of the Investigatory Powers Act 2016 are satisfied, or

(ii) in the case of warrants in relation to which there are section 8(4) certificates, the requirements of subsection (7) or of section 151(2) of the Investigatory Powers Act 2016 are satisfied.".

(4) In relation to a warrant under Chapter 1 of Part 1 of RIPA issued on an application made by or on behalf of the Chief of Defence Intelligence, section 15 of RIPA (general safeguards) has effect as if—

(a) in subsection (1)(a), after "subsection (3)" there were inserted "or of section 53(2) and (5) of the Investigatory Powers Act 2016";

(b) in subsection (6)(b), after "subsection (7)" there were inserted "or of section 54(2) of the Investigatory Powers Act 2016".

(5) In its application to warrants under Chapter 1 of Part 1 of RIPA by virtue of paragraph (3), section 152 of the 2016 Act has effect as if—

(i) in subsection (1), after "section 150" there were inserted "or of section 15 of the Regulation of Investigatory Powers Act 2000";

(ii) in subsection (2), for the words "warrant in accordance" to the end there were substituted "list of operational purposes (within the meaning in section 142(4)).";

(iii) references to secondary data include references to related communications data (as defined in section 20 of RIPA);

(iv) references to intercepted content include references to intercepted material (as defined in section 20 of RIPA).

Exclusion of matters from legal proceedings

17.—(1) Section 56 of the 2016 Act (exclusion of matters from legal proceedings etc.) has effect as if the references in subsection (1) to "interception-related conduct" included—

(a) conduct occurring between 27th June 2018 and 8th August 2018 that is the making of an application for a warrant under Chapter 1 of Part 1 of RIPA by or on behalf of, or the issue of such a warrant addressed to, the head of an intelligence service or the Chief of Defence Intelligence;

(b) conduct occurring between 27th July 2018 and the day on which the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force that is the making of an application for a warrant, or the issue of a warrant, under Chapter 1 of Part 1 of RIPA;

(c) the imposition of any requirement on any person to provide assistance in giving effect to any such warrant.

(2) Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, section 56 has effect as if the reference in subsection (3)(a) to an intercepting authority(**14**) included—

(a) the Director General of the National Crime Agency;

(b) the Commissioner of Police for the Metropolis;

(c) the Chief Constable of the Police Service of Northern Ireland;

(d) the chief constable of the Police Service of Scotland;

(e) the Commissioners for Her Majesty's Revenue and Customs, and

(f) a person who for the purposes of any international mutual assistance agreement, is the competent authority of a country or territory outside the United Kingdom.

Duty not to make unauthorised disclosures

18. Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, section 57 of the 2016 Act has effect as if the reference in subsection (3)(a) to an intercepting authority included—

(a) the Director General of the National Crime Agency;

(b) the Commissioner of Police for the Metropolis;

(**14**) "Intercepting authority" is defined by section 18(1), which is commenced only in part by these Regulations.

(c) the Chief Constable of the Police Service of Northern Ireland;

(d) the chief constable of the Police Service of Scotland;

(e) the Commissioners for Her Majesty's Revenue and Customs, and

(f) a person who for the purposes of any international mutual assistance agreement, is the competent authority of a country or territory outside the United Kingdom.

Other transitional and saving provision relating to interception

19.—(1) The following provisions of RIPA continue to have effect in relation to conduct taking place before 27th June 2018—

(a) section 1(1) to (3) and (5) to (8) (unlawful interception);

(b) Schedule A1 (monetary penalty notices)(**15**).

(2) From 30th May 2018 until section 18(1) is fully in force, section 19(1) of the 2016 Act has effect as if the reference to section 18(1)(a) to (g) were a reference to section 18(1)(a) or (g).

(3) From 27th June 2018 until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force—

(a) section 6 of the 2016 Act (definition of "lawful authority") has effect as if the reference to a targeted interception warrant in subsection (1)(a)(i) included a reference to a warrant under Chapter 1 of Part 1 of RIPA;

(b) section 7 of the 2016 Act (monetary penalties for certain unlawful interceptions) has effect as if the reference to a targeted interception warrant in subsection (7)(a) included a reference to a warrant under Chapter 1 of Part 1 of RIPA;

(c) section 68 of RIPA (tribunal procedure)(**16**) has effect as if in subsection (7)(e) (duty to assist the Tribunal imposed on those required to provide assistance in giving effect to a warrant) after "2016" there were inserted "or section 11 of this Act".

(4) Until paragraph 47 of Schedule 10 to the 2016 Act (amendment of section 71 of RIPA) is fully in force, section 71(10) of RIPA (codes of practice: guidance by Commissioner)(**17**) has effect as if for the words from "interception" to the end there were substituted "Investigatory Powers Commissioner by virtue of paragraph 11 of Schedule 1 to the Investigatory Powers Act 2016".

(5) Until paragraph 49(2)(b) of Schedule 10 to the 2016 Act (amendment to the definition of "interception warrant") is fully in force, sections 48(1)(**18**), 65(8)(**19**) and 68(7)(**20**) of RIPA have effect as if the reference to an interception warrant in those sections included a reference to—

(a) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2 of the 2016 Act, or

(b) a bulk interception warrant under Chapter 1 of Part 6 of the 2016 Act.

(6) The repeal of section 6(2)(a) to (c) and (i) of RIPA by paragraph 45 of Schedule 10 to the 2016 Act does not affect any warrant under Chapter 1 of Part 1 of RIPA in force immediately before 8th August 2018.

(**15**) Schedule A1 was added by S.I. 2011/1340. Paragraph 6 of Schedule A1 was amended by paragraph 125 of Schedule 9 to the Crime and Courts Act 2013.

(**16**) Section 68 was amended by paragraph 97 of Schedule 8 to the Crime and Courts Act 2013, section 243(3), (4), (5)(b) and (c) and (6) of the Investigatory Powers Act 2016 ("the 2016 Act") and S.I. 2018/341.

(**17**) Section 71(10) was amended by S.I. 2011/1340.

(**18**) Section 48(1) was amended by S.I. 2014/892.

(**19**) Section 68(8) was amended by section 243(1)(i) of the 2016 Act and S.I. 2018/341.

(**20**) Section 68(7) was amended by paragraph 97 of Schedule 8 to the Crime and Courts Act 2013, section 243(5)(b) and (c) of the 2016 Act and S.I. 2013/602.

Transitional and saving provisions relating to wireless telegraphy

20.—(1) An interception authority which has effect immediately before 8th August 2018 continues to have effect until 27th December 2018 unless revoked earlier.

(2) For the purpose of any interception authority which continues to have effect in consequence of paragraph (1)—

(a) section 48(1) of the Wireless Telegraphy Act 2006 (offence relating to interception and disclosure of messages)(**21**) has effect as if the amendment made by section 259(3) of the 2016 Act had not been made;

(b) section 48(5) of the Wireless Telegraphy Act 2006 (definition of "designated person")(**22**), any regulations made under that section, and section 49 of that Act (interception authorities)(**23**) continue to have effect;

(c) section 6 of the 2016 Act (definition of "lawful authority") has effect as if in subsection (1) after paragraph (c) there were inserted—

"(d) in the case of interception of a communication in the course of its transmission by means of wireless telegraphy, if it takes place with the authority of a designated person under section 48 of the Wireless Telegraphy Act 2006 (interception and disclosure of messages).".

(3) In this regulation "interception authority" has the same meaning as in section 49(11) of the Wireless Telegraphy Act 2006.

CHAPTER 2

Transitional and saving provisions regarding equipment interference

Mandatory use of equipment interference warrants

21. Until 27th December 2018 section 13 of the 2016 Act (mandatory use of equipment interference warrants) does not apply to conduct authorised by a warrant issued under section 5 of the Intelligence Services Act 1994(**24**), or an authorisation given under section 7 of that Act(**25**), which is in force immediately before 8th August 2018.

Safeguards relating to retention and disclosure of material

22. Until 27th June 2018—

(a) section 102 of the 2016 Act (power to issue warrants to intelligence services: Secretary of State) has effect as if the reference in subsection (1)(c) to sections 129 and 130 includes a reference to sections 2(2)(a) or 4(2)(a) of the Intelligence Services Act 1994 or section 2(2)(a) of the Security Service Act 1989(**26**);

(b) section 103 of the 2016 Act (power to issue warrants to intelligence services: the Scottish Ministers) has effect as if the reference in subsection (1)(d) to sections 129 and 130

(**21**) 2006 c. 36. Section 48(1) is amended by section 259(2) of the Investigatory Powers Act 2016 ("the 2016 Act"); section 259 is brought into force by regulation 12(b) of these Regulations.
(**22**) Section 48(5) is omitted by section 259(5) of the 2016 Act; section 259 is brought into force by regulation 12 of these Regulations.
(**23**) Section 49 is omitted by section 259(6) of the 2016 Act; section 259 is brought into force by regulation 12 of these Regulations.
(**24**) 1994 c. 13. Section 5 was amended by section 2 of the Security Service Act 1995 (c. 35), section 74(1) of the Regulation of Investigatory Powers Act 2000 and section 251(3)(a) of the 2016 Act.
(**25**) Section 7 was amended by paragraph 1 of Schedule 5 to the Regulation of Investigatory Powers Act 2000, section 116(1) and (2) of the Anti-Terrorism, Crime and Security Act 2001 (c. 24) and section 31(5) and (6) of the Terrorism Act 2006.
(**26**) 1989 c. 5. Section 2(2)(a) was amended by paragraph 1 of Schedule 4 to the Intelligence Services Act 1994 and paragraph 4(2) of Schedule 10 to the 2016 Act.

includes a reference to sections 2(2)(a) or 4(2)(a) of the Intelligence Services Act 1994 or section 2(2)(a) of the Security Services Act 1989.

Safeguards relating to examination of material etc.

23. Until 27th December 2018, section 193 of the 2016 Act (safeguards relating to examination of material etc.) has effect as if in subsection (3) (selection conditions for examination) at the end there were inserted—

"(e) that the selection of the protected material for examination is authorised—

(i) by a warrant issued under section 5 of the Intelligence Services Act 1994, or

(ii) in accordance with arrangements in force in relation to material obtained under an authorisation given under section 7 of that Act."

Safeguards relating to retention and disclosure of relevant ISA material

24. From 27th December 2018—

(a) sections 129 to 130 of the 2016 Act apply to relevant ISA material as they apply to material obtained under a targeted equipment interference warrant;

(b) section 131 of the 2016 Act applies in relation to an item subject to legal privilege which is relevant ISA material as it applies in relation to an item subject to legal privilege which has been obtained under a targeted equipment interference warrant.

(2) In this regulation, "relevant ISA material" means material which—

(a) consists of communications, private information or equipment data;

(b) was obtained as a result of conduct—

(i) authorised under a warrant issued under section 5 of the Intelligence Services Act 1994, or under an authorisation given under section 7 of that Act, and

(ii) which as a consequence of section 13 of the 2016 Act an intelligence service may not engage in except under the authority of an equipment interference warrant, and

(c) was obtained before the coming into force of section 13 of that Act or under a warrant or authorisation to which section 13 did not apply as a consequence of regulation 21.

Items subject to legal privilege

25. Until section 106 of the 2016 Act (power to issue warrants to law enforcement officers)(**27**) is in force, section 112(6)(c) of that Act is to be read as if "or as mentioned in section 106(3)(a)" were omitted.

CHAPTER 3

Other transitional and saving provisions

Transitional provision regarding the Tribunal

26. Until section 168 of the 2016 Act is in force, in section 68(7) of RIPA (persons subject to a duty to co-operate with the Tribunal), paragraph (e) has effect as if the reference to section 168 were omitted.

(**27**) Section 106 was amended by paragraph 74(3) of Schedule 9 to the Policing and Crime Act 2017.

Amendment to the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018

27. In regulation 6 of the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018 (transitional provision regarding technical capability notices)(**28**)—

(a) in paragraph (1), for "19(1)" substitute "18(1)";

(b) in paragraph (2), for "102(1)" substitute "106(1)".

Ben Wallace
Minister of State
Home Office

29th May 2018

(**28**) S.I. 2018/341.